

TRIBAL COURT ORDINANCE
Ordinance # 97-300-01

Section 1. Purpose.

1.01. Pursuant to the authority vested in the Little River Band of Ottawa Indians by its Constitution and particularly by Article VII of the Constitution of the Little River Band of Ottawa Indians, and in furtherance of the Tribal Council's authority to provide for the health, safety, morals, and welfare of the Tribe, the Tribal Council of the Little River Band of Ottawa Indians hereby establishes the Tribal Judiciary, and enacts this ordinance which shall establish the purposes, powers, and duties of the Tribal Courts.

This Ordinance is adopted under the provisions of the Constitution of the Little River Band of Ottawa Indians, which was recognized and extended by Section 8(a)(2) of Public Law 103-324. It is intended that this Ordinance continue in full force and effect not only until such time as the Little River Band of Ottawa Indians adopt a new constitution under the Indian Reorganization Act, as authorized by Section 8(a)(1) of Public Law 103-324, but thereafter, unless and until it is modified, amended or revoked by the duly authorized and elected governing body as created by such new constitution.

Section 2. Composition of the Tribal Court System.

2.01. *Tribal Court.* The Tribal Court shall be a court of general jurisdiction and shall consist of one (1) chief judge and one (1) associate judge who shall meet as often as circumstances require. The Tribal Council may also establish such lower courts or tribunals of limited jurisdiction as the Tribal Council deems necessary from time to time. Except as provided by any Tribal Ordinance establishing lower courts and tribunals, the Tribal Court shall have general superintending control over all such lower courts and tribunals.

2.02. *Court of Appeals.* The Tribal Court of Appeals shall consist of three (3) judges. At least one (1) of the three (3) judges shall be an Elder (age 55 years or older) in the Tribe, and at least one (1) of the three (3) judges shall be an attorney licensed to practice before the courts of a state in the United States.

Section 3. Organization and Operation of the Tribal Court System.

3.01. *Duties and Powers of the Chief Judge.* The person appointed by the Tribal Council to serve as Chief Judge of the Tribal Court shall serve as the presiding officer of the Tribal Court. In that capacity, the Chief Judge shall:

1. Initiate policies concerning the Tribal Court's internal operations and external matters affecting the Tribal Court's position;
2. Meet regularly with the Associate Judge and all Judges of lower courts and tribunals;
3. Counsel and assist the Associate Judge in the performance of his/her duties;
4. Supervise caseload management and monitor the disposition of judicial work of the Tribal Court and Tribal Court personnel;
5. Represent the Tribal Judiciary in its relations with other courts, other agencies, the Tribal Council, the bar, the general public and in ceremonial functions; and
6. Perform any act or duty or enter any order necessarily incidental to carrying out the purposes of this section.

3.02. *Judicial Conferences.* At least once a year and at such other times as the Chief Judge finds necessary, the Judges of the Tribal Courts, including the Court of Appeals, shall meet to consider proposals to adopt or amend the rules of the court, improve the administration of justice, including the operations of the court, and to review court finances, including preparation of budget proposals and financial reporting.

Section 4. Jurisdiction of Tribal Court.

4.01. *Original Jurisdiction.* The Tribal Court shall have original jurisdiction to hear and determine all civil and criminal claims and remedies arising within the jurisdiction of the Tribe or which the Tribe or an enrolled member of the Tribe is a party, except where original jurisdiction or exclusive is given by Ordinance to some other court or tribunal or where the Tribal Courts are denied jurisdiction by the Constitution.

4.02. *Appellate Jurisdiction.* The Tribal Court shall have appellate jurisdiction to hear appeals from decisions of administrative tribunals, tribal agencies, commissions or other subordinate organizations except where the Tribal Court is denied such appellate jurisdiction by the Constitution or Ordinances of the Tribe.

4.03. *Effectuation of Jurisdiction.* The Tribal Court shall have jurisdiction and power to make any order proper to fully effectuate the Tribal Court's jurisdiction and judgments.

Section 5. Powers of the Tribal Courts.

5.01. The judicial powers of the Little River Band of Ottawa Indians shall extend to all cases and matters in law and equity arising under the Tribal Constitution, the laws and ordinances of or applicable to the Little River Band of Ottawa Indians including but not limited to:

1. To adjudicate all civil and criminal matters arising within the jurisdiction of the Tribe or which the Tribe or an enrolled member of the Tribe is a party;
2. To review ordinances and resolutions of the Tribal Council or General Membership to insure they are consistent with the Tribal Constitution and to invalidate those ordinances and resolutions which are determined to be inconsistent with the Tribal Constitution;
3. Hear disputes based on ordinances and laws of the Tribe for purpose of determining innocence or guilt where trial by jury has been waived;
4. Assign fines and penalties as allowed for violations of Tribal law in accordance with Tribal and Federal Law;
5. Grant search warrants to enforcement officers when just cause is shown;
6. Grant warrants, writs, injunctions and orders not inconsistent with the Tribal Constitution;
7. Establish, by general rules, the practice and procedures for all courts of the Little River Band of Ottawa Indians;
8. To prepare and present to the Tribal Chairperson and Tribal Council a budget requesting an appropriation of funds to permit the Tribal Courts to employ personnel or to retain by contract such independent contractors, professional services and whatever other services may be necessary to carry out the dictates of this Ordinance and all Ordinances creating lower courts of limited jurisdiction.

Section 6. Jurisdiction of Court of Appeals.

6.01. *Appeals as of Right.* The Court of Appeals has jurisdiction over all orders and judgments which are appealable as a matter of right. Except where appellate jurisdiction is given by Ordinance to some other court or tribunal or where the Court of Appeals is denied appellate jurisdiction by the Constitution or Ordinances of the Tribe, all appeals to the Court of Appeals from final judgments or decisions of the Tribal Court by this Ordinance shall be a matter of right.

6.02. *Appeals by Leave.* Where appellate jurisdiction is given by Ordinance to the Tribal Court or any other lower court or tribunal, the Court of Appeals may review by appeal a case after decision on appeal by the Tribal Court or other lower court. All appeals to the Court of Appeals from appellate decisions of Tribal Court or other lower court or tribunal shall be reviewable only upon application for leave to appeal granted by the Court of Appeals.

Section 7. Action by the Tribal Courts; Record of Proceedings.

7.01. *Decisions and Orders.* Decisions or Orders of the Tribal Courts shall be in writing, with a concise statement of the facts and reasons for the decisions; and shall be signed by the Judge issuing the opinion. Decisions or Orders of the Court of Appeals shall be signed by all participating Judges. Any Judge dissenting from a decision shall give the reasons for the dissent in writing which is signed by such Judge. All Orders, decisions and dissents issued by the Tribal Courts shall be filed in office of the Tribal Court Clerk, and a record of all decisions and dissents shall be maintained by the Court Clerk.

7.02. *Form of Writs and Process.* All writs and process issuing from the Tribal Courts shall be styled: "In the Name of the Little River Band of Ottawa Indians,". The seal of the Tribal Court affixed to, or impressed upon, any writ or process in any action in any proceeding or action shall be conclusive evidence that the writ or process was issued by the Tribal Court in all cases where such writ or process may be lawfully issued.

7.03. *Record of All Proceedings Required.* The Tribal Courts shall be courts of record and a record of all official proceedings in the Tribal Courts shall be made and maintained by and filed in the Office of the Tribal Court Clerk.

Section 8. Substantive Law.

8.01. In all cases the Courts of the Little River Band of Ottawa shall apply the laws, regulations, or policies of the Little River Band of Ottawa, or any applicable laws or regulations of the United States.

8.02. Any matters not covered by the laws or regulations of the Little River Band of Ottawa, or by applicable federal laws or regulations, may be decided by the Courts according to the laws of the State of Michigan.

Section 9. Procedure in the Tribal Courts.

9.01. *Procedural Rules Applied.* The procedure to be followed in civil and criminal cases filed in the Tribal Courts shall be the Michigan Rules of Criminal Procedure and Michigan Rules of Civil Procedure, except insofar as such procedures are superseded by Rules of Procedure enacted by the Tribal Courts.

9.02. The Tribal Courts' authority to promulgate and amend general rules governing practice and procedure in the Tribal Courts shall include, but not be limited to, the authority to:

- (1) Prescribe the forms of all process to be issued by the Courts,
- (2) Prescribe the practices and procedures in the Tribal Courts concerning:
 - (i) Methods of review,
 - (ii) Special verdicts,
 - (iii) Granting of new trials,
 - (iv) Taxation of costs,
 - (v) Notice of special motions and other proceedings,
 - (vi) The staying of proceedings,
 - (vii) Hearing of motions,
 - (viii) Discovery procedures, and
 - (ix) Rules of Evidence.

Section 10. Rules of Evidence.

10.01. The Tribal Courts shall be bound by the Michigan Rules of Evidence, except insofar as such rules are superseded by Rules of Evidence enacted by the Tribal Court.

Section 11. Judicial Independence.

11.01. The Tribal Courts shall be independent from the legislative and executive functions of the tribal government and no person exercising powers of the legislative or executive functions of government shall

exercise powers properly belonging to the judicial branch of government; provided that the Tribal Council shall be empowered to function as the Tribal Court of the Little River Band until the judges prescribed by this Ordinance have been appointed. Rulings of the Tribal Courts cannot be appealed to the Tribal Council or to any other jurisdiction unless such appeal is specifically provided for or permitted by Federal law.

Section 12. Appointment and Compensation.

12.01. *Manner of Appointment.* Judges of the Tribal Courts, including the Court of Appeals, shall be appointed by the affirmative vote of five (5) of the seven (7) members of the Tribal Council.

12.02. *Compensation.* The Tribal Council shall have the power to establish the level of compensation for each Judge; provided that the compensation due to each individual Judge shall not be diminished during the term of his/her appointment.

12.03. *Swearing in Judges.* Tribal Judges shall be sworn in by the Chairperson of the Tribal Council.

Section 13. Qualifications for Appointment.

13.01. In addition to the qualifications described in Section 2, an individual must meet the following additional qualifications in order to be eligible for appointment as a Judge of any Tribal Court:

1. *Member of the Tribe.* Any member of the Tribe who is twenty-five (25) years of age or older, who is not a member of the Tribal Council or running for a seat on the Tribal Council, and has not been convicted of a felony under Federal, Tribal, or State law or any other crime involving dishonesty or moral turpitude, unless such conviction stems from the performance of a legal duty to the Tribe, may serve as a Tribal Judge.

2. *Non-Member Qualifications.* A non-member of the Tribe may be appointed to serve as a Tribal judge if such individual possesses a Law degree and has practiced in Federal Indian law or as a Tribal Judge.

3. *Licensed Attorneys in Certain Cases.* In connection with the establishment of a lower court or division of the Tribal Court system, the Tribal Council may provide by ordinance that an individual serving as Tribal Judge in that court or division must, in addition to meeting the qualifications required under subsection (a) or (b) of this Section 12, be an attorney licensed to practice in the courts of a state of the United States.

Section 14. Term of Office.

14.01. Except as provided for in Section 15 of this Ordinance, the term of office for all Tribal Judges shall be four (4) years, or until the Tribe adopts a new Constitution pursuant to a Secretarial Election and makes judicial appointments under such Constitution.

14.02. Tribal Judges will continue in office until a successor is sworn in by the Tribal Chairperson.

14.03. There shall be no prohibition against continuous service.

Section 15. Resignation or Removal.

15.01. *Resignation.* A Tribal Judge may resign his/her office at any time. Resignation is immediate upon a Judge submitting written notice to the Tribal Council of his/her resignation.

15.02. *Reasons for Removal of Tribal Judge.* A Tribal Judge may only be removed by a vote of five (5) of the seven (7) Council Members following a recommendation of removal by a majority of the remaining Tribal Judges for the following reasons:

1. Unethical conduct, as defined by the Michigan Indian Judicial Association Model Code of Tribal Judicial Conduct;

2. Gross misconduct or malfeasance in office that is clearly prejudicial to the administration of

justice;

3. Ineligibility, under Section 13.01 of this Ordinance to serve as a member of the Tribal Court;

4. Inability to fulfill the duties of the office due to mental or physical disability, to the extent that they are incapable of exercising judgment about or attending to the business of the Tribe. Such determination shall be based upon or supported by competent medical evidence or opinion.

15.03. *Procedure for Removal of Tribal Judge.* If a member of the Tribal Judiciary obtains information which indicates that grounds exist for removal of another Judge, the member shall provide written notice of the charge and specify the facts supporting such charge to all Tribal Judges, including the accused. The Judge so charged shall be notified in advance and provided an opportunity to answer the charges at a public hearing of all members of the Tribal Court held for that purpose. Such hearing shall be noticed at least ten (10) days prior to the hearing at which the Judge's referral for removal is to be considered. If a majority of the remaining Judges of the Tribal Court vote to refer the Judge to the Tribal Council for removal, the grounds for removal shall be set forth with specificity and the Tribal Judge shall be suspended from office until the Tribal Council acts on the referral at a public meeting of the Tribal Council held to consider that referral. At least ten (10) days before the meeting of the Tribal Council at which the vote for removal will be taken, the affected Judge shall be provided with a written notice of that meeting, which notice shall specify the nature of the charges being considered and the facts allegedly supporting such charges. Before any vote for removal is taken, the affected Judge shall be provided with a reasonable opportunity to answer the charges at the Tribal Council meeting. If the Tribal Council, by affirmative vote of five (5) of the seven (7) Council members, finds that grounds for removal as stated by the Tribal Court exist, the Tribal Council shall remove the Judge from office. If the Tribal Council find that the grounds for removal do not exist, the suspended Judge shall be fully reinstated to the Tribal Court.

Section 16. Vacancy.

16.01. A vacancy in any Judge position resulting from a Judge's death, resignation or removal shall be filled in the same manner as the original appointment. The term of office for any Tribal Judge appointed under this Section shall be four (4) years, or until the Tribe adopts a new Constitution pursuant to a Secretarial Election and makes judicial appointments under such Constitution.